

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
SAN ANTONIO DIVISION**

**UBIQUITOUS CONNECTIVITY, LP,
Plaintiff,**

v.

**CITY OF SAN ANTONIO, by and through its
agent, CITY PUBLIC SERVICE BOARD OF
SAN ANTONIO, d/b/a CPS ENERGY,
Defendant.**

CASE NO. 5:18-cv-718

PATENT CASE

JURY TRIAL DEMANDED

**DEFENDANT’S SECOND NOTICE OF SUPPLEMENTAL AUTHORITY AND
NOTICE OF INTER PARTES REVIEW**

I. Notice of Supplemental Authority in Further Support of CPS Energy’s Rule 12(b)(6) Motion to Dismiss for Failure to State a Claim

After briefing was complete for Defendant CPS Energy’s¹ Rule 12(b)(6) Motion to Dismiss for Failure to State a Claim and Memorandum of Law in Support Thereof (Dkt. 17, “Dismissal Motion”),² and for Plaintiff Ubiquitous Connectivity, LP’s (“Ubiquitous”) Motion for Leave to Amend Its Complaint (Dkt. 32, “Motion to Amend”),³ the Federal Circuit issued its opinion in *Chargepoint, Inc. v. SemaConnect, Inc.*,⁴ in which the Federal Circuit affirmed the district court’s determination that the claims of the asserted patents are ineligible under 35 U.S.C. § 101. Attached as **Exhibit A** please find a copy of the *Chargepoint* slip opinion of the

¹ Defendant CPS Energy is formally named in this lawsuit as the City of San Antonio, by and through its agent, City Public Service Board of San Antonio.

² Ubiquitous filed its Opposition to the Dismissal Motion on November 5, 2018 (Dkt. 26); and CPS Energy filed its Reply in support on November 26, 2019 (Dkt. 30).

³ Ubiquitous filed its Motion to Amend on December 10, 2018 (Dkt. 32); and CPS Energy filed its Opposition on December 17, 2018 (Dkt. 33); and Ubiquitous filed its Reply in support on December 26, 2019 (Dkt. 36).

⁴ Appeal No. 2018-1739.

Court of Appeals.⁵ Similar concepts were also addressed by the Federal Circuit in *Solutran, Inc. v. Elavon, Inc.*⁶, in which the Federal Circuit reversed the district court's denial of a motion for summary judgment of invalidity under § 101. Attached as **Exhibit C** please find a copy of the *Solutran* slip opinion. These opinions provide additional support for CPS Energy's Dismissal Motion under Section 101.

II. Notice of Inter Partes Review

On July 15, 2019, Resideo Technologies, Inc., filed petitions for *inter partes* review, challenging the validity of all the claims of U.S. Patent Nos. 8,064,935 and 9,602,655, the patents asserted in the present litigation. Attached as **Exhibits D and E** please find copies of IPR2019-1335 and IPR2019-01336. The petitions identify Defendant City of San Antonio by and through its agent, City Public Service Board of San Antonio d/b/a CPS Energy, as a real party in interest. On July 29, 2019, the Patent Trial & Appeal Board accorded the petitions a filing date and confirmed the deadline for the Patent Owner's preliminary response, October 29, 2019. The PTAB will issue its decision whether to institute the petitions on or before January 31, 2020.

⁵ Also, in *Cellspin Soft, Inc. v. Fitbit, Inc.* (Appeal Nos. 2018-1817, 2018-1819, 2018-1820, 2018-1821, 2018-1822, 2018-1822, 2018-1823, 2018-1824, 2018-1825, 2018-1826), the Federal Circuit confirmed that allegations about inventiveness that are divorced from the claims or the specification do not defeat a motion to dismiss (Slip opinion at 20). Attached as **Exhibit B** please find a copy of the *Cellspin* slip opinion.

⁶ Appeal Nos. 2019-1345, 2019-1460.

Dated: August 6, 2019

Respectfully submitted,

By: /s/ Brady Cox

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Counsel for Defendant

**CITY OF SAN ANTONIO, by and through
its agent, CITY PUBLIC SERVICE BOARD
OF SAN ANTONIO, d/b/a CPS ENERGY**

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 6th day of August 2019, I caused the foregoing document to be electronically filed with the Clerk of Court using the CM/ECF system, which caused it to be served on counsel who have appeared in this matter by electronic mail.

/s/ *Brady Cox*
Brady Cox